



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/006,825	12/05/2001	David Martin Jackson	15,942.1	2540

7590

02/05/2003

William W. Letson
Kimberly-Clark Worldwide, Inc.
Patent Department
401 North Lake Street
Neenah, WI 54956

EXAMINER

BUTTNER, DAVID J

ART UNIT

1712

PAPER NUMBER

2

DATE MAILED: 02/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/006,825

Applicant(s)

JACKSON ET AL.

Examiner

David Buttner

Art Unit

1712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-52 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Art Unit: 1712

If applicant desires priority under 35 U.S.C. 119e based upon a previously filed copending application, specific reference to the earlier filed application must be made in the instant application. This should appear as the first sentence of the specification following the title, preferably as a separate paragraph. The status of nonprovisional parent application(s) (whether patented or abandoned) should also be included. If a parent application has become a patent, the expression "now Patent No. _____" should follow the filing date of the parent application. If a parent application has become abandoned, the expression "now abandoned" should follow the filing date of the parent application.

If the application is a utility or plant application filed on or after November 29, 2000, any claim for priority must be made during the pendency of the application and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior application. See 37 CFR 1.78(a)(2) and (a)(5). This time period is not extendable and a failure to submit the reference required by 35 U.S.C. 119(e) and/or 120, where applicable, within this time period is considered a waiver of any benefit of such prior application(s) under 35 U.S.C. 119(e), 120, 121 and 365(c). A priority claim filed after the required time period may be accepted if it is accompanied by a grantable petition to accept an unintentionally delayed claim for priority under 35 U.S.C. 119(e), 120, 121 and 365(c). The petition must be accompanied by (1) a surcharge under 37 CFR 1.17(t), and (2) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2) or (a)(5) and the date the claim was filed was unintentional. The Commissioner may require additional information

Art Unit: 1712

where there is a question whether the delay was unintentional. The petition should be directed to the Office of Petitions, Box DAC, Assistant Commissioner for Patents, Washington, DC 20231.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 12 and 31 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 12 indicates "acrylic acid" is not required to be in the "acrylic acid terpolymer". This is impossible.

Claim 31 lacks antecedent basis for said "personal care product".

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-52 provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of copending Application No. 9-900698. Although the conflicting claims are not identical, they are not patentably distinct from each other because both claim fibrous substrates covered or being covered with the same composition. See claims 26 and 28 of publication 2002/0155281.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-52 provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of copending Application No. 9-564424. Although the conflicting claims are not identical, they are not patentably distinct from each other because both claim fibrous substrates covered or being covered with the same composition. Note claim 22 of the copending application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-52 provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of copending Application No. 9-564780. Although the conflicting claims are not identical, they are not patentably distinct from each other because both claim fibrous substrates covered or being covered with the same composition.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Art Unit: 1712

Claims 1-52 provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of copending Application No. 9-564837. Although the conflicting claims are not identical, they are not patentably distinct from each other because both claim fibrous substrates covered or being covered with the same composition.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-52 provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of copending Application No. 9-565125. Although the conflicting claims are not identical, they are not patentably distinct from each other because both claim fibrous substrates covered or being covered with the same composition. Note claims 74,75,91,100,131,134 etc. of the copending application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

The examiner has reviewed only the version of claims of the above applications that were provided by applicant during prosecution of parent 9-564212.

Murano exemplifies applicant's preferred sulfonated acrylic acid terpolymer (example 1). It lacks the EVA.

Pomplun shows similar articles utilizing a different binder.

Art Unit: 1712

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Buttner whose telephone number is 703-308-2403. The examiner can normally be reached on weekdays from 10am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Dawson, can be reached on (703) 308-2340. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-

0661.

DAVID J. BUTTNER
PRIMARY EXAMINER

DB
1/23/03

David Buttner